IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL W.P.NO.1023 OF 2005

Chetan R.Nagda & Ors. ..Petitioners

Vs.

N.D.Pawar & Anrs. ..Respondents

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Mr.Virag Tulzapurkar with Shrirang Shrimani and Vijay Sureka for Petitioners
Mr. V.B.Konde-Deshmukh A.P.P. for the State

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CORAM: A.M.KHANWILKAR,J.

DATE : DECEMBER 8, 2005

P.C.

1. Heard Mr.Virag Tulzapurkar learned senior counsel for the Petitioners. According to him the trial Court has acted without jurisdiction in issuing process in the subject criminal action against the Petitioners in relation to offence under the provisions of the Standard of Weights and Measures (Enforcement) Act, 1985 and Rules made thereunder.

2. As the ground urged before this Court can be effectively addressed in revision, it was suggested

to Mr.Tulzapurkar that the petitioners may adopt the remedy of revision, in view of the recent judgment of this Court in the case of **V.K.Jain & Ors. Vs. Pratap V.Padode reported in 2005(3) Mh.L.J.778**. In the said decision, it has been observed that against the order of Magistrate issuing process, revision before the Sessions Court is alternative and efficacious remedy.

3. Mr.Tulzapurkar however, relied on the decisions of the Supreme Court in the case of **Collector of Customs and Excise Cochin and others Vs. M/s.A.S.Bava reported in AIR 1968 SC 13,** and **Deccan Merchants Co.Operative Bank Ltd. Vs. M/s.Dalichand Jugraj Jain and others reported in AIR 1969 SC 1320** to contend that remedy of revision application is neither alternative nor efficacious. He submits that the exposition in these two decisions have not been considered in the decision of this Court in **V.K.Jain's case (Supra)**. This submission does not commend to me. In the former decision before the Apex Court, the scope of remedy of revision was considered in the context of the provisions of Central Excises and Salt Act, 1944. In the later decisions in para 38, on which reliance is placed, the Apex Court was called upon

to consider the scope of remedy under Section 154 of the Maharashtra Co-Operative Societies Act, 1961. The said decisions will be of no avail while considering the scope of remedy of revision provided in the Code of Criminal Procedure against order issuing process. In the case of **V.K.Jain (Supra),** this Court has adverted to series of decisions of the Apex Court which have consistently taken the view that against order of issuance of process the aggrieved accused can take recourse to remedy of revision. If remedy of revision is available against the order of Magistrate issuing process, the inherent power of this Court ought not to be resorted to. To get over this position, learned counsel would contend that even if the ground raised in this petition can be effectively answered by the Revisional Court, that does not preclude exercising writ jurisdiction of this Court. To buttress this submission reliance was placed on the decision in the case of **Harbanslal Sahnia and another Vs. Indian Oil Corporation Ltd. and others reported in AIR 2003 SC 2120.**

4. Indeed, in the abovesaid case of **Harbanslal Sahnia and others (supra)**, in para no.5, it is observed that "the High Court can exercise writ

jurisdiction in three contingencies, amongst others, that the orders or proceedings are wholly without jurisdiction or vires of an Act is challenged." In the present case, there is no challenge to the validity of any Act. However, the ground urged before me that the trial Court has no jurisdiction as mentioned earlier, can be effectively answered even by the Revisional Court. It is not the argument of Mr.Tulzapurkar that such a plea cannot be answered by the revisional Court.

5. Viewed in this perspective, in my opinion, following the observations made in the decision of this Court in the case of **V.K.Jain (Supra),** I decline to entertain the present petition. Instead, the petitioners will have to be relegated to remedy of revision. I am persuaded to adopt this course as judicial notice can be taken of the enormity of the problem which is experienced by this Court in the subject assignment of Applications/Petitions for quashing. In that, large number of Writ Petitions or Applications under Section 482 of the Code are directly filed before this Court without taking recourse to the remedy of revision before the concerned Sessions Court. As presently advised there are over more

than one lakh pending cases before the trial Courts in Mumbai alone in relation to offence such as under Sections 138 and 141 of the Negotiable Instruments Act. Besides, the large number of cases pending in Mumbai Courts, equally large number of similar cases are pending in other Courts throughout Maharashtra. The tendency of the litigants in most of these cases is to directly rush to this Court on the issuance of process. Invariably, the paramount consideration to directly rush to this Court is to take benefit of the laws delay. The cascading effect is on the efficacious docket management of this Court. Understood thus, as a matter of prudence, it has become necessary to exercise rule of discretion to decline to entertain writ petition directly challenging the order of Magistrate issuing process especially in cases where the challenge is founded on the grounds that can be effectively answered by the revisional Court on the application of the settled legal position. The advantage will not only be one of lessening the burden of avoidable docket management of this Court; but also facilitate this Court with a reasoned judgment of the Sessions Court on the points in issue, in the event the matter is required to be brought before this Court by the

aggrieved party.

6. Accordingly, Petitioners may adopt the remedy of revision application before the Sessions Court if so advised within four weeks from today. Till then, no precipitative steps be taken against the petitioners. All questions are left open.

7. Petition disposed of on the above terms.

[A.M.KHANWILKAR, J.]